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THEODORE W. DWIGHT, LL. D.

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The New York Ophthalmic and Aural Institute

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THE development of Ophthalmology and Otology as leading specialties, has imposed upon those members of the profession who have been led to devote themselves to their practice, and thus to take rank among their brethren, the duty and high privilege of a nice observance of etiquette, as well as loyal subjection to the existing code of medical ethics.

A number of gentlemen, members of the New York Ophthalmological Society, have, for nearly two years, thought that great harm was being done to the professional status of the specialties referred to, and thus to the cause of general professional morals, by the manner in which a public charity and a private business had been associated in the New York Ophthalmic and Aural Institute, and that this evil influence was likely to prove injurious in direct proportion to the scientific ability of the founder of the Institute.

Yielding to the evident dictates of charity, some of the objectors called upon the founder of the Institute and expostulated, pointing out the offensive features in its organization and the inevitable influence upon the tone of the profession, and offering aid, in any manner that would be acceptable, to make the Institute conform with existing private or public hospitals. The advice and aid were not adopted. Subsequently, a meeting of gentlemen in the Society was called, to which the founder of the Institute was invited. At this meeting, which the founder did not attend, the matter was fully dis-

cussed, and a Committee appointed to wait upon the former and learn his views of the whole subject. The Committee came from this interview, convinced that no change could be accomplished by persuasion.

A delay of nearly a year was compelled, by circumstances beyond the control of the gentlemen engaged, and now the matter is brought into the Ophthalmological Society, with the hope that, among men engaged in a common purpose, the evil features of the Institute may be so removed as to prevent their reproducing themselves elsewhere, and with the least possible injury to its founder.

To prevent any errors in so serious a matter, it has been thought wise to get a reliable opinion on the points of law involved in the case. The subjoined opinion has been got from the distinguished gentleman, who is well known as the head of Columbia College Law School, and President of the State Board of Charities, and closes an appeal to the Society for the passage of a resolution disapproving of the New York Ophthalmic and Aural Institute. It will be seen that one element of the opinion is of a somewhat personal character, but it has been thought impossible to omit it, without withholding from the Society the data necessary for discussion and action.

My Opinion has been asked upon the following general statement of facts:

On the 28th of August, 1869, the New York Ophthalmic and Aural Institute, was incorporated by a number of prominent physicians and citizens, under the Act of the Legislature of New York, passed April 12, 1848, entitled "An Act for the Incorporation of Benevolent, Charitable, Scientific, and Missionary Societies," and the emendatory acts respecting the same subject. The object of the incorporation is stated in the certificate required by law, to be "the *gratuitous* scientific and medical treatment of the *poor* and *needy*, for all diseases of the eye and ear, by able and skilled physicians, upon the plan pursued in institutions of a similar character in Europe, and the advancement of the study and treatment of such diseases." The certificate, containing other formal matters, but nothing else material to the present inquiry, was approved by a Supreme Court Judge, as prescribed by law.

The By-Laws of the Institution thus organized, refer, in the Second Article, to the treatment of patients suffering from diseases of the eye and ear, "*belonging to all classes of society.*" The Third and Sixth Articles of the By-Laws, have references to the same effect. The Sixth presupposes the payment of fees. One sentence in it is as follows: "Medical fees shall belong to the Surgeons in charge." The Fourth and Fifth Articles of the By-Laws, show that Dr. H. Knapp is at the head of the medical staff, has the appointment of the medical officers, and the superior charge, control and responsibility of all the medical affairs of the institution. Donations, other contributions, and legacies, are invited

from charitably-disposed persons.—*Articles VII. and VIII., By-Laws.*

The First Report of the Society, on page 16, shows that $4,381 were received from patients. The second report, for the year ending April 30, 1871, page 15, shows, that there was received from patients the sum of $7,812 69; from the State of New York, $1,288 82, and from the city of New York, $1,000. This amounts to a total for the year, of $10,101 51. The Third Annual Report discloses that there was received from patients, $6,425 95; from the State, $2,432 17, and from the city, $2,000, making a total from these sources, of $10,858 12. It appears, from the Third Report, page 5, that fifty-six people of means in the so-called "Indoor Department," not only paid (in the year covered by that Report) the full expenses to the Institution for their board and nursing, but, in addition, the "*customary fees*" for medical services. This number is about one-fifth of the whole number of "in-door" patients, that being 252. The amount of these fees is not reported, as is presumed, on account of the by-law already referred to, which provides that "medical fees shall belong to the surgeons in charge." Their amount can only be conjectured, though I am informed that it is large.

Another class of facts must also be noticed. The code of ethics of the "American Medical Association," printed by Collins, Philadelphia, 1871, provides, under the general head of the "duties of physicians to each other and to the profession at large," as follows: "It is derogatory to the dignity of the profession to resort to public advertisements, or private cards, or hand-bills, inviting the attention of individuals affected with par-

ticular diseases; publicly offering advice and medicine to the poor, gratis, or promising radical cures. * * * These are the ordinary practices of empirics, and are highly reprehensible in a regular physician."—*Art. I., Sec.* 3, *p.* 22 *of Code.*

In the Second Annual Report of the corporation under consideration, there is an item concerning "Medical Instruction" given by the surgeon in charge, as follows: "The first half of a complete course of didactic and demonstrative lectures on Ophthalmology, etc. * * * *Application* was made to the faculty of the College of Physicians and Surgeons of this city (New York), for the use of one of their lecture-rooms. This request was kindly granted, and I gladly avail myself of this opportunity to express my obligation to the Faculty of the College."—*Report, pp.* 7, 8.

In the "Medical Record," Vol. VII., p. 54 (March 15, 1872), there is a report of lectures on "Otology, delivered at the College of Physicians and Surgeons, New York, by Prof. H. Knapp, M. D." Also, in the same journal of May 1, 1872, p. 20 of advertisements, a commendatory notice of one of Lippincott's works, signed as follows: "Prof. H. Knapp, College of Physicians and Surgeons, New York City." Mr. Knapp's name does not appear on the Catalogue of that College as one of its officers, and I am informed that he was not connected with it in any way officially.

The second section of the Code already referred to, insists on purity of character, moral excellence, and correct moral principles, as essential to a medical man; and urges that the absence of these cannot be compensated by any scientific attainments, however high.—*P.* 21, 22.

On this general state of facts, I am desired to answer the following questions:

Ques. I. Is the By-Law of the corporation allowing medical fees to the surgeons in charge, or the practice under it, in accordance with the certificate of incorporation or with law?

Ques. II. Is the same By-Law or course of conduct, consistent with the medical code of ethics set forth in the statement of facts?

Ques. III. Has there been any violation of professional courtesy, as found in this same code, by the publications set forth in the same statement from the "Medical Record?"

Before making answer to those questions, I would state that they must be decided as mere matters of law. The first inquiry is one involving corporate power. The second and third refer to the construction of a written code, in which, as there are no technical medical terms employed, the question is also one of law.

1. In reply to the first question, I would say that I am of opinion that the By-Law, and the practice under it, is contrary to law; and if persisted in, would furnish good ground for an application, on the part of the Attorney-General of the State, to dissolve the corporation. There are two respects in which the proceeding should be condemned. One is, that it does not correspond with the charter; another is, that no charter could be drawn under the general law of 1848, for the combination of the fees of private practice with the charitable purpose to be expressed in the organic act.

(1). In the first respect, it is very plain that the objects of the Institution are confined to the medical treatment

of the poor and needy, and that is declared to be *gratuitous*. The Supreme Court Judge is required to *approve* every such certificate of incorporation, before the Society goes into existence. He, of course, only approves what appears in the certificate. It is true, that there is a clause to the effect that the institution is to follow a plan pursued in institutions of a similar character in Europe. I am informed that there is no such plan in Europe of combining the collection of private fees with charitable work. Even if there were, it should have been set forth with distinctness in the Charter. It cannot be assumed, under such general words, that the Judge approved such a combination, particularly, as it will be shown hereafter, there would be no right on his part to give such an approval.

(2). There is no statute in New York which permits a corporation to be organized on any such plan as has been practiced in this case. If it were legal, it should have been stated in the Charter. The law of 1848, and the emendatory acts thereto, only allow of the organization of corporations for the following purposes: "Benevolent, charitable, literary, scientific, missionary, mission, or Sabbath-schools." Law of 1848, Ch. 319, "Fine Art associations." Ch. 242, Laws of 1860, "Historical and literary." Chap. 302 (Laws of 1862), "Educational institutions, or chapels, or places of Christian worship, or parsonages." Laws of 1870, Ch. 51, "Societies of Workingmen and Trades' Unions." Ch. 875, Laws of 1871, "Religious societies." Ch. 209, Laws of 1872, "Mutual improvement in religious knowledge, or furtherance of religious opinion, or combination of both." Ch. 649, Laws of 1872, "All of these

objects are general in their nature, and in the legal sense, '*charitable*;' *i. e.*, public as distinguished from private, with, perhaps, the exception of 'trades' unions.' There is not a word to permit one of these institutions to unite with itself a private end—such as to aid, or in any way to enable professional men to obtain private fees from their practice in connection with the corporation. *Any fees obtained should belong to the corporation*, whenever there is a right to demand them.

Such an arrangement as is contemplated by the by-law under examination, might be the subject of gross abuse. It may not be in the present case. The high reputation of the physician in charge, might lead one to suppose that it is not abused. But that is not the question. The arrangement is vicious in principle, and bad in example. It tends to shake the public confidence in charitable institutions, and thus to diminish patronage. There is danger that such a plan, if followed by others, would lead to unwarranted raids on the public treasury. It subjects professional men in private practice, to an unfair and one-sided competition. In unworthy hands, it might lead to a perfunctory performance of public duties, and to an overweening devotion to private practice and emolument. I do not say that these consequences have followed. I only urge that they might, and that, accordingly, the By-Law is opposed to public policy, and should be repealed by the corporation; and, at all events, should not be acted upon. The exact objects of the corporation, as expressed in the Charter, should be carried out, and the institution should be placed on a strictly charitable basis.

Ques. II. In answering the second question, it will be

borne in mind that I am not to inquire whether the course pursued by the Medical Superintendent of the corporation, is contrary to the *general* code of ethics, but only whether it is opposed to the *special rules* adopted by the "American Medical Association." It is not at all important whether these rules are mere positive ordinances or not. At all events, they exist; and my sole inquiry is, whether they conflict with the action of the corporation or its agents. Further, it is unnecessary to consider whether, if the conflict exists, it is unintentional or not. I have the naked question to answer whether the two do, *in fact*, conflict. I think that they do. When the corporation, in one breath, asserts in its *Charter* that it is established for the gratuitous treatment of certain diseases of the poor and needy, and then in its *By-Laws* provides that the Institution is established for all classes of society; and that fees shall be paid by the wealthy to the surgeons in charge, to which they consent—I think that, in the language of the medical code, the surgeons "resort to public advertisements * * * inviting the attention of individuals affected with particular diseases—publicly offering advice and medicine to the poor gratis," p. 22. It must be considered as one scheme, to invite the attention of wealthy patients, and to announce that the poor, etc., are treated gratuitously. It would be much the same as if a corporation of lawyers were organized to manage the causes of the poor gratuitously; and, while this was announced, notice was at the same time given that the legal gentlemen would try the causes of the wealthy for a consideration. The whole matter, so far as it is non-ethical would seem to consist in using the public

charitable advertisement as a vehicle to carry along notices beneficial to the practice of private individuals. I suppose that the "code" aims to avoid this result. This very thing is accomplished, however, by the acts of the present corporation.

Ques. III. The third question seems, to me, too clear for argument. Both of the matters referred to in the "Medical Record," leave the impression that Dr. Knapp was, at the time the notices were published, connected with the College of Physicians and Surgeons. The last notice of the two is very clear. I presume that Dr. Knapp would disavow the notice if called to his attention. Looked at as it stands, and without explanation, there is a breach of professional courtesy in not requiting the liberal conduct of the College, and a false statement, which is unfair towards the College, as well as toward the professor who fills the special chair, to which the subjects of Dr. Knapp's lectures relate.

I accordingly answer that the by-law of the corporation called the "New York Ophthalmic and Aural Institute," and the practice under it concerning fees, etc., is not in accordance with the certificate of incorporation, nor with the general rules of law; that the conduct of the surgeons, as far as they take fees, etc., is not in accordance with the "medical code of ethics; and that the publications in the "Medical Record," referred to in the statement of facts, as they now stand, represent that which is not true, and are wanting in professional courtesy.

THEODORE W. DWIGHT.

New York, *Dec.* 9, 1872.

At the regular meeting of the New York Ophthalmological Society, held Jan. 13th, 1873, the following resolutions, which had been introduced at the meeting of Dec. 9th, 1872, and laid over one month for deliberation, were called up, discussed, and after a full hearing had been given to the founder of the Institute, passed:

Resolved, That we cannot, either as members of the medical profession or as members of the New York Ophthalmological Society, continue, by our silence, to be liable to the charge of approving of the plan or workings of the New York Ophthalmic and Aural Institute, of which Dr. H. Knapp is the real owner and surgeon in charge.

Resolved, That in our opinion the plan of carrying on a public charity and a private professional business, as illustrated by the New York Ophthalmic and Aural Institute, will, if persisted in and patronized, exercise a baneful effect upon the character of such young medical men as may be exposed to its temptations, weaken the title of our profession to the confidence of the public, and expose our needed labor in the cause of humanity to just suspicion and reproach.